



Globalization, Corporation Social Responsibility, policy and law, and TPP, the conversation between Backer and Professor Liao on these hot topics is intriguing and thought provoking. Here is the edited audio transcript of the conversation for our readers.

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On Globalization:

*one cannot understand  
global regulatory  
framework without  
understanding of state.*



Professor Liao:

I notice your research areas covers a wide range of topics, from corporation law, constitution law into international affairs and globalization. What's your approach, for example, for corporate social responsibility?

我注意到您的研究范围相当广泛，从公司法，宪法到国际关系和全球化。您是如何切入这些议题，比如说企业社会责任？



Professor Backer:

The construction of new global framework is significant impacts by the nature of the state. One cannot understand the state, one cannot understand global regulatory framework. The closer you look, you more you can see the necessity of the intimate connection thereof.

Let me give you an example. In corporate social responsibility, The U.S. and EU academics and practitioners are completely segregated. There are one group of professionals treated this issues as an international law, and there are another group treated it as a corporate law issue. You can see there is a parallel discussion on the same issue with different angels. It is until very recently that they realize the connection.

主权国家对全球化体系下的国际秩序有着强大的影响力。如果不了解主权国家就无法形成对国际秩序的恰当理解。你看得越近，就越能意识到主权国家与国际秩序间的亲密联系。比如说企业社会责任一体在欧美社会中有两套相平行独立的话语。国际问题专家从国际法国际关系视野来审视企业社会责任而公司法专家从主权国家的公司法角度来看待这一问题。直到最近，欧美社会才意识到需要将主权国家和国际关系的两种视野联系起来看待问题。

As for CSR, what I am trying to do is to theorize the way CSR could be harmonized with the ruling party basic line, how it could be embedded with the planning that is being developed for next stage of socialist modernization. The international CSR rules have political roots in china's own terms within the framework. There are strong foundations for CSR within the ruling party's line has been developed during the last 20 years. This just transposing. Once you transposing that language, then function of objective of CSR are very easy to transpose into Chinese context.

我对中国企业社会责任研究的方向主要是探索一条契合中国政治法律体制，以及不断发展的社会主义现代化方向下的企业社会责任理论。国际企业社会责任制度在中国存在政治基础。这种基础是坚实的，特别是在先锋党领导下被不断发展近 20 年。企业社会责任的目标是相当契合不断发展的中国国情。



### On Law and Policy:

*You need flexibility. But you also need foundation of rule of law governance*



Professor Liao:

There is an assumption that to follow the policy rather than law for corporation in China, your insight? 在中国企业有着重政策轻法律的倾向，您如何看待？



Professor Backer:

It is true that there are lots of changes when it comes to policy. The last thing you want is to have a regime rigidly tied up to its past, especially when people progress. You need flexibility. But you also need foundation of rule of law governance, the kind provide flexibility, as long as it meets foundational objectives.

确实政策有着相当大的灵活性。你最不希望看到的就是一个守旧僵化的政权。人总是前进发展的，而发展需要灵活性。但同时你也必须有法治的基础，灵活性是服务于这些基础的。

The west prospective of the necessity to create a legal regime where the societal activity are being regulated is not much different from the direction what Chinese political culture trying to reach. To impose enterprise certain sets of responsibility that is for the health of long term development.

西方社会所强调的社会活动需要在法律范围内进行等主张与中国政治集体所追求的并无太大的差异。要求企业旅行社会责任对于长久的健康发展是有必要的。

Further, law is important. There is an increasing discourse in China. A modification or development of the ruling party basic line, which requires all party cadres to fully and faithfully obey the law. if you look in that perspective, a cadre who failed to do that may violate the party discipline. Maybe provocative, this suggests a complex process of reworking and re-inventing judicial system.

法律不应当被忽视，尤其是当下共产党强调党员干部必须遵守宪法法律。从这一角度看，违反宪法法律的党员干部意味着违反党的纪律规定。从某种层面看，这些新的观念反映了一种复杂的体制革新进程。



## On TPP and China:

*In the context of SOEs, the difficulty is the seamlessly between public and private sector, which has been rejected by other countries*



Professor Backer:

China can begin some considerations about TPP and especially SOEs issue after the TPP been approved by U.S. congress. For Americans, SOE issue is a competition and subsidy issue. China can look into the approach of EU for subsidy issue. It provides a normative template. The EU has an adopt an appropriate for the relationship between state and SOEs.

在美国国会批准 TPP 后，中国应当认真考虑 TPP 和国企问题。对于美国涑水，国企问题主要是竞争和补贴问题。中国可以从欧盟哪里吸取一些经验，欧盟就采取了一些举措来处理国家和国企的关系。



Professor Liao:

There are dialogues between U.S. and China on TPP and China did look into EU. Chinese government still have many concerns even with these approaches.

中美就 TPP 已经展开了一些对话，中国也在研究欧盟的一些举措，不过仍有很多顾虑。



Professor Backer:

You are correct. There are maybe two approaches helpful in the negotiation: Differential standard and differential time table for conformity. 你说的很对。在这种国际谈判中可能两种策略会有效：标准差别和履行义务时间表差别。



Professor Liao:

Another issue is the coordination between different agencies with different concerns that not being effectively conveyed during the dialogues.

另外一个问题就是各个不同部位间在谈判中缺乏有效沟通，有些议题难以被有效表达。



Professor Backer:

This is very true. TPP is massive. When TPP and TIPP coming in, it potentially shapes the rule of global trade. My sense is that the tendency since 2006 or 2007 is to have powerful states together to adopt consensus. The influential group is heavily involved



and no state want to lock out. It is a very interesting time that states decide to remain or leave the club.

我很能认同。TPP 是相当繁杂的，并潜在重塑国际贸易秩序。我的感觉是自从 2006、2007 年起世界大国萌生意识，决定当下国际秩序留去问题。



Professor Liao:

This is why the lawyer's profession is very important in this context. Not only clear law, lawyer also prefer ambiguous law because it make it possible for legal business.

这也是为何律师执业在这一情形下极为重要，律师们不仅需要清晰的法律更期待不清晰的法律，从而受益其中。



Professor Backer:

I agree. The law itself can be very clear but the application itself has always been in ambiguity. It is the lawyer's job to take the clear law and apply it into very messy context. But well, lawyer want the law remain ambiguous in order to have some flexibility. But it also interesting if you look at our history, which suggests that law remains as a traditional but less effective means to regulate societal activities and people are getting impatient for this.

我认同法律是清晰的，但多数情况是法律的适用是模糊的。律师的职责就是将清晰的法律适用于各种困难的情形中。尽管律师期待受益于定义不明的法律，但是当你看看我们的历史就意识到，司法是社会管制的传统工具但是并非最有效的，而人们对此开始颇感厌倦。



Professor Liao:

In terms of policy and law, that is why China would like to join things like WTO, so it provides platform for communication. China could convey its concerns and thoughts to other nations before the dispute end in international court.

在政策和法律间，这也是为何中国愿意加入 WTO 这样的组织，从而可以有一个交流意见的平台。在陷入国际法庭争执钱，中国可以向其他国家表达顾虑。



Professor Backer:

I agree with you about such communication, but even so there will come a point, the understanding will only sharpen the knowledge of contradiction, and one has to come to prepare that as well.

In the context of SOEs, the difficulty is the seamlessly between public and private sector, which has been rejected by other countries. If it has been rejected in one context, it will be foundation of another. In order to break the contradiction, one has to find a sets of rules for equivalent. Neither U.S. nor China has reach to that point. Or either could find alternative to adjust rules to find such equivalent.

我认为沟通意见是重要的，但是沟通的最后不可避免意见冲突的显现，而双方应当为此做好准备。在国企问题上，分歧点在于国企与国家之间亲密无间的关系。西方社会不赞成这一关系。为了消弭分歧，需要在分歧中找共同点。现在中美双方还在探寻共同点中。





Professor Liao:

Things we need to put on the table before negotiation. China has been vigorously making efforts try to find such equivalent by presenting ourselves.

中国正努力将意见提在谈判桌上从而找到共同点。



Professor Backer:

the problem of presentation on SOE here is: to expose, from the perspective of EU, you expose advantage of the seamless relation between state and enterprise. This would be a point that calls for negotiation. Otherwise, U.S. and China will go into circus that leads nowhere because you will cover same ground. Thus, it might be necessary to preserve them and isolate those advantages. The key is the cost and pricing of preserving such advantage because the such advantage is the foundation of Chinese system. This requires to find a pricing equivalent that U.S. could accept it as a waiver to our rules. This is a difficult and sensitivity process that cannot distracted by popular passion as it will be useless for the interest of both nations. That is why U.S. president get much heat.

国企问题的难点就在于如果将企业和国家亲密无间的关系的优势表白出来，将不可避免谈判中的取舍问题。当取舍问题发生后，中美可能会出现毫无进展的兜圈子谈判。策略上有必要隔离这些优势。这些优势是中国社会主义制度的根基，在谈判中面临的的就是如何去议价，美国如何去接受这些条件。需要指出的这种谈判是敏感而艰难的，需要避免过分的公众热情。美国总统就因此受过责难。